IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

PUBLIC INTEREST LITIGATION NO.102 OF 2006

Brig. P.V. Gole, A.V.S.M. (Retd.) and others .. Petitioners
v/s.
Maharashtra Metropolitan Region Development
Authority (MMRDA) Through Commissioner and others. .. Respondents

Mr. R.S. Apte for the petitioners.
Mr. S.R. Nargolkar, Assistant Government Pleader for the State.
Mr. J.J. Bhatt, senior counsel with Mr. D. Kakalia and Ms. R. Thakwani i/by M/s. Mulla & Mulla for the respondent No.6.
Ms. Kiran Bagalia i/by Ms. Asha Bhambhnani for the respondent No.1.

CORAM : J.N. PATEL AND A.A. SAYED, JJ.
DATED : 4TH OCTOBER, 2007

P.C.

By way of this Public Interest Litigation the petitioners are objecting to the introduction of standard gauge in Mumbai Metro Rail Project. It is their contention that the standard gauge is not suitable for the metropolitan town of Greater Mumbai considering the requirement of the city and therefore, the decision of the respondents to introduce standard gauge with narrow coaches for Mumbai Metro Railway Project deserves to be quashed and set aside and so also the contract awarded on that basis and it should be directed to modify the project for adoption of broad gauge with wide coaches.

2. It is contended by the learned counsel for the petitioners that their challenges are two-fold; firstly, as the railway being the subject matter of the Central Government, the planning has to be done by the Central Government as the subject is covered by Entry 22 in List I of the VIIth Schedule provided in

Constitution of India and secondly, it is against larger public interest.

3. We have given our anxious consideration to the pleadings, the affidavit-in-reply filed by the respondents in response to the petition and we find that the decision taken by the respondents cannot be said to be contrary to public interest for the very reason that introduction of Mumbai Metro Rail Project is part of the project taken up by MMRDA to supplement the public rapid transport system with other available modes of transportation like suburban trams, buses and taxis which is permissible vide Entry 13 in List II of VIIth Schedule .

4. In so far as the challenge to the decision, on the other hand, about the competence of the Metro Rail Project is concerned, with laying down railways and running trains, strictly speaking, it has nothing to do with the railways and it is well within the competence of the State to provide for various modes/services for mass rapid transport system other than Railways, particularly in the metropolitan city like Mumbai. In so far as the technical feasibility of the project is concerned, same has been studied on various levels and the decision has been taken after obtaining experts' reports in the matter. Therefore, it cannot be said that it is decided to lay down metro rail to ply on standard gauge to weed out the competition or for that reason, it will require the State to import the material required for the said purpose. Further, it cannot be said that it is against public interest. Rather, it is a matter of policy decision taken by the State after consulting experts from concerned field and this court does not find any reason to interfere with the same and, therefore, petition is dismissed with no order as to costs.

(J.N. PATEL, J.)

(A.A. SAYED, J.)